

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Establishment of Rules and Policies)	
For the Digital Audio Radio Satellite)	MB Docket No. 04-160
Service in the 2310-2360 MHz)	
Frequency Band)	
Radio Service Terrestrial Repeaters Network)	

**REPLY COMMENTS OF
BONNEVILLE INTERNATIONAL CORPORATION**

I. Introduction.

Bonneville International Corporation ("Bonneville") hereby submits these Reply Comments in connection with the Petition for Declaratory Ruling (the "*NAB Petition*") filed with the Commission on April 14, 2004 by the National Association of Broadcasters ("NAB") regarding the broadcasting of local weather and traffic by satellite digital audio radio service ("SDARS") providers and future plans to expand their reach into local radio. The *NAB Petition* urges the Commission to make clear that SDARS providers are prohibited from: (1) using any technology to permit the delivery of content that would be aired on a receiver in one location that differs from content that would be aired on a receiver in a different location; and (2) providing locally oriented services on nationally distributed channels. Bonneville submits these reply comments in response to those commenters that have opposed the *NAB Petition* and have asserted that SDARS providers should be permitted to offer local weather and traffic information. The provision of localized programming in the national SDARS service is inconsistent with the fundamental premises upon which SDARS was authorized and will have a negative impact on the local programming and community service being provided by existing terrestrial broadcasters. Accordingly, Bonneville supports the *NAB Petition*.

II. Permitting SDARS Providers To “Localize” Their National Programming Service Will Compromise The Existing Programming And Community Service Provided By Local Broadcasters.

Bonneville is a diversified media company that operates a full service television station and 34 radio stations in markets across the country.¹ Bonneville stations have a long record of outstanding service to the public and consistently win awards for their commitment to local news programming and community service.

For example, WTOP-AM/FM provides extensive news, traffic and weather to listeners in the Washington, D.C. metropolitan area. In 2003 alone, it was awarded: Regional Edward R. Murrow Awards for Overall Excellence, Spot News, Best News Series, and Best Web Site; Chesapeake Associated Press Awards for Outstanding News Operation, Outstanding Spot News Reporting, Outstanding News Series, Outstanding Coverage of a Continuing Story, Outstanding Sports Feature, Outstanding Specialty Reporting and Best Newscast; and has been nominated for the 2004 National Edward R. Murrow Award for Best Radio News Website. In Chicago, Bonneville’s WNND(FM) was named the “Station of the Year” in 2000 and has also been awarded with the Silver Dome Award for Newscasts, Public Affairs Programming, and Public Service Announcements by the Illinois Broadcasters Association. In Salt Lake City, Bonneville’s KSL(AM) has been honored by the Utah Broadcasters Association and the Utah Headliners Chapter of the Society of Professional Journalists with numerous awards for its local news programming, including awards for Best Newscast, Best Breaking News Story, Best News Series, and Best Sports Event Broadcast.

Bonneville’s commitment to service to the local community is likewise well established. According to its most recent Values Report, in 2003 Bonneville stations devoted nearly 3600

¹ All of the stations operated by BIC are licensed to a BIC-affiliated company, Bonneville Holding Company.

hours of air time to public affairs programming, public service announcements, and special community projects.² Together with volunteer employee participation in community projects, cash, and in-kind contributions, Bonneville stations have donated an estimated \$51 million to the communities they serve. As a result of these efforts Bonneville radio stations have won numerous NAB Crystal Awards – the highest industry honor for community service.³ Bonneville also initiated in 1999 the annual “Service to America” Summit, together with the National Association of Broadcasters Education Foundation, to recognize and encourage outstanding community service by broadcasters and their community partners. This demonstrated commitment to local news programming and community service exemplifies the importance of local broadcasters to the communities they serve.⁴

It is precisely this record of public service that will be compromised if SDARS providers are permitted to continue – let alone expand – their recent efforts to “localize” what was originally intended (and represented) to be a national service. The provision of local programming by SDARS providers threatens to erode support for existing local radio broadcast stations and to undermine their ability to serve their local communities.

In contrast to local radio stations, SDARS providers are not invested in local communities. They have no local service obligations and indeed have no connection to, or interest with, local residents. By its very nature, satellite radio cannot fill the vital role that local radio broadcasters play in the communities they serve. Yet, if the Commission permits SDARS providers to localize their service, it will place at risk the important contributions local radio

² BONNEVILLE INTERNATIONAL CORPORATION, 2004 VALUES REPORT (2004).

³ Bonneville stations have won 18 of the 141 NAB Crystal Awards for outstanding community service since 1992

⁴ Broadcaster’s commitment to public service to their communities across the industry is also well documented. According to the NAB, local broadcasters invested \$9.6 billion in their local communities in 2003. *NAB National* (Continued...)

stations make to the fabric of life in local communities throughout the country.

III. The Commission Should Confirm That SDARS Providers Are Prohibited From Providing Local Programming Or In The Alternative Re-Open The Proceeding To Determine The Impact Such Service Has On Local Broadcasting.

The *NAB Petition* asserts that the provision of locally oriented weather and traffic programming on nationally distributed SDARS channels is prohibited under the Commission's rules and requests that the Commission confirm that SDARS was authorized as a national-only radio service. Indeed, the provision of local oriented weather and traffic programming by SDARS providers challenges the very underpinnings of the policies upon which the Commission adopted satellite radio service rules.

In its 1995 Notice of Proposed Rulemaking regarding SDARS, the Commission initially stated that local broadcasters would not necessarily be adversely affected by SDARS because local broadcasting "has the ability to provide local public affairs programming, local news and weather, local traffic reports and local personalities,"⁵ and that such programming "could not practically be provided via satellite DARS."⁶ In its *Report and Order* authorizing SDARS, the Commission relied in part on the claims of the SDARS applicants that they would not provide local programming.⁷ The Commission did not, however, comprehensively address whether or not SDARS would deleteriously affect local broadcasters and their provision of local

Report on Local Broadcasters' Community Service (June 2004).

⁵ *In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, IB Docket No. 95-91, *Notice of Proposed Rulemaking*, 11 FCC Rcd 1, 3 (1995) ("DARS NPRM").

⁶ *Id.* at 6.

⁷ *In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, IB Docket No. 95-91, *Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 5754, 5765 (1997) ("DARS R&O"); see also *NAB Petition* at 6-8.

programming to the communities they serve.⁸ Instead, as demonstrated by the NAB throughout its Petition, the clear assumption relied upon by the Commission in authorizing SDARS was that it was intended as a national-only, and not local, service. Today, however, with 31 SDARS channels now broadcasting local weather and traffic,⁹ it is clear that this assumption did not prove out. In adopting SDARS the Commission did not envision that technological changes and affirmative actions on the part of SDARS providers would result in additional channel capacity being used to deliver local traffic and weather services that compete directly with local radio broadcasters. Nevertheless, the Commission specifically left itself with flexibility to respond to changed circumstances. As the *NAB Petition* notes, in adopting SDARS rules the Commission promised to take “any necessary action to safeguard the important service that terrestrial radio provides” and expressly left open the possibility of revisiting the question of SDARS potential harm to local broadcasters.¹⁰

Bonneville submits that it is critical that the Commission not ignore its commitment to support local terrestrial radio service. The Commission should confirm that the introduction of local traffic and weather services is prohibited under the Commission’s SDARS rules. In the alternative, the recent deployment of such satellite radio service signals the Commission that it is time to re-open the SDARS proceeding to revisit the issue of what impact such service will have on local broadcasters.

⁸ As stated in the *NAB Petition*, the Commission did not thoroughly consider the studies submitted in the SDARS rulemaking proceeding that were “replete with evidence of the fragility of local radioservice and how it could be severely impacted by diversion of the audience to SDARS.” See *NAB Petition* at 8 (citing *Local Perspectives on Localism in Broadcasting and the Adverse Impact of Satellite DARS*, John Harring and Harry M Shooshan III, Strategic Policy Research, Sept. 12, 1995).

⁹ XM Radio Inc. is currently providing twenty-one channels dedicated to local weather and traffic. <http://www.xmradio.com> (last visited June 21, 2004). Sirius Satellite Radio Inc. is currently providing ten channels dedicated to local weather and traffic. <http://www.sirius.com> (last visited June 21, 2004).

¹⁰ *NAB Petition* at 16-20; *DARS R&O* at 5769.

IV. The Commission Should Clarify That SDARS Providers Are Prohibited From Utilizing New Technologies To Provide Local Content To Specific Locations.

The *NAB Petition* asserts that rapid development of technology will enable SDARS providers to continue to localize service and will make their formats virtually indistinguishable from local radio service. It seeks Commission clarification that SDARS providers are prohibited from using technologies, such as addressable receivers, to provide location specific content that could be aired on a receiver in one location that would differ from content aired at other locations. A similar issue was raised in connection with the use of terrestrial repeaters by SDARS providers.

When the Commission adopted service rules for SDARS it tentatively concluded “to prohibit the use of terrestrial repeaters to transmit locally originated programming.” Allowing such use of repeaters it surmised, “would be inconsistent with the allocation of this spectrum,” to provide a national-radio service.¹¹ The NAB notes that, notwithstanding the Commission’s tentative conclusion to prohibit SDARS repeaters for transmitting locally originated programming, SDARS provider XM Radio Inc. (“XM”) developed technology that would allow repeaters to provide “geographically targeted broadcast data, such as weather, sports scores, advertisements and the like.”¹² This technology would have enabled XM to provide locally differentiated material based upon the geographic location of its subscriber.

While XM has agreed not to use terrestrial repeaters to distribute local content, the *NAB Petition* expresses concern that SDARS providers are actively developing alternative Global

¹¹ *DARS R&O* at 5812; *see also NAB Petition* at 14-15. The Commission’s stated purpose in authorizing terrestrial repeaters for use with SDARS is to retransmit “information from the satellite signal in order to overcome effects of signal blockage and multipath interference.” *DARS R&O* at 5810.

¹² *NAB Petition* at 15 (citing United States Patent Office Patent No. US 6,347,216 B1, entitled “*Method and System for Providing Geographic Specific Services in a Satellite Communications Network*,” issued to XM Radio Inc., February 12, 2002).

V. Conclusion.

Respectfully submitted,

By: /s/
Bruce T. Reese
President and Chief Executive Officer

By: /s/
David K. Redd
Vice President, Secretary and General Counsel

¹³ *NAB Petition* at 6-7. XM Radio Inc., for instance, stated “DARS is a nationwide service that will not carry local news and information.” *DARS NPRM Comments of American Mobile Radio Corporation* at 18 (Sept. 15, 1995). Sirius Satellite Radio Inc. (formerly CD Radio, Inc.) similarly stated that satellite radio would a “national service and therefore offers no competitive threat whatsoever to traditional stations’ local programming strengths, such as local new, weather, traffic....” *DARS NPRM Comments of CD Radio, Inc.* at 73 (Sept. 15, 1995).